



# California Fair Political Practices Commission

January 20, 1989

T. Wade Randlett  
2626 Hanover Street  
Palo Alto, CA 94304

Re: Your Request for Informal  
Assistance  
Our File No. I-88-488

Dear Mr. Randlett:

You have requested clarification of the Commission's interpretation of the contribution limitations imposed by Proposition 73. In particular, you have asked whether Proposition 73 prohibits a group of persons from creating a number of political committees to make, indirectly, aggregate contributions to a candidate in excess of the \$1,000 limitation applicable to an individual or the \$2,500 limitation applicable to a political committee. You have discussed this question with three different members of the Commission staff, one of whom indicated that the Commission might adopt a regulation on this subject.

Initially, we wish to inform you that the Commission has voted to sponsor legislation which would impose aggregate contribution limits and also would provide specific rules for applying the contribution limits to affiliated entities. The Commission's legal staff has discussed whether similar provisions could be adopted by regulation. It is likely that the one staff member who indicated a regulation might be proposed was referring to these discussions. However, the legal staff has advised the Commission to proceed by means of a legislative proposal and the Commission has directed its legislative coordinator to seek introduction of that proposal.

In the meantime, the Commission is advising that contributions from two or more affiliated entities are considered to be from a single source if one entity directs or controls the contribution-making activities of the other entities. This advice is based on two opinions adopted by the Commission in 1978. (In re Lumsdon (1978) 2 FPPC Ops. 140; In re Kahn (1978) 2 FPPC Ops. 151, copies enclosed.) We believe that application of the Lumsdon and Kahn opinions to the contribution limitations of Proposition 73 is consistent with the purpose of those limitations.

T. Wade Randlett  
January 20, 1989  
Page 2

If you have any further questions concerning this matter,  
please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:plh

Enclosures

FPPC

Dec 13 8 21 AM '88

T. Wade Randlett  
2626 Hanover Street  
Palo Alto, CA 94304

9 December 1988

Kathryn Donovan  
Legal Division  
Fair Political Practices Commission  
PO Box 807  
Sacramento, CA 95804-0807

Dear Ms. Donovan,

I have spoken with three of FPPC's staff consultants about the constitution and abilities of "political committees" under new law created by Proposition 73, and I have some grave concerns about possible FPPC interpretation of those provisions.

According to my reading of the law, a political committee is any two or more citizens who properly file form 410 with the state. Also, I find nothing that prohibits an individual from contributing up to \$2,500 per fiscal year to as many duly registered "political committees" as the individual sees fit.

It does not require much creativity to see how a group of citizens could create and/or participate in a number of these political committees to make indirect contributions to a candidate well in excess of the \$1,000 individual limit. The first two of your consultants I spoke with noted the loophole and agreed that Proposition 73 seemed to allow that activity. The third, Alice Hughes, said that Prop. 73 technically allowed such activity, but that the FPPC likely would bar it by requiring "aggregation of contributions," meaning that an individual could not exceed contributions to an individual candidate be those contributions direct or indirect.

While I certainly understand why FPPC would like to see that loophole closed, I am terribly troubled by the idea that FPPC should wield such unchecked power to make law without legislative consent. When I asked Ms. Hughes what empowered FPPC to make such decrees, she noted that the legislature vested FPPC with the authority to make

Kathryn Donovan  
Page 2

regulations where election law was unclear. This seems reasonable, but quite a non-sequitur. There is nothing at all unclear about the political committee loophole, and there is an important difference between unclear law and unwise or even shoddy law. If the people make bad law it is up to the people, or at least their elected representatives, to amend the err.

I hope that I am misinformed about Proposition 73, and that the law does not allow the political committee loophole. But in any event, I would appreciate receiving some statement from you about exactly where FPPC feels that clarification ends and law-making begins.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Wade Randlett", with a long horizontal flourish extending to the right.

T. Wade Randlett  
Government Affairs  
Marcus & Millichap